



Lack of Transparency in Selection of the Danish Ombudsman

Old Habits Die Hard

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Simon Drugda

—[Simon Drugda](#), PhD Candidate at the University of Copenhagen

Danish Parliamentary Ombudsman Jørgen Steen Sørensen resigned from office on November 1 to take on the job of a Supreme Court judge. Sørensen had announced his intention to resign on short notice because of the extraordinary circumstance of his audition for a Supreme Court judge.[1] However, with the Parliament shut until October because of the summer recess, MPs struggled to find the new Ombudsman. The Parliament eventually filled the vacancy with a month delay,[2] but throughout this time, it was not clear who was up in the running, how to apply for the position, or when the decision on the new Ombudsman will be made.

The delay was also due to the fact that the Standing Committee of the Parliament on Legal Affairs (LAC), which is tasked with authority to propose a suitable candidate for an Ombudsman to the Parliament, had a hard time reaching an agreement. The Committee, therefore, decided to appoint a temporary Ombudsman in the interim, who served the whole month of November 2019. The Ombudsman *proper* will take office on December 1.[3]

The episode showed that the selection of an Ombudsman in Denmark is unwieldy and somewhat obscure, especially when compared to appointments to other public offices and comparative best practice. This contribution examines the procedure for selection of the Danish Parliamentary Ombudsman, taking the recently adopted “Venice Principles on the Protection and Promotion of the Ombudsman Institution” as a benchmark.[4] The selection process of the Danish Ombudsman could be modernised at least in one important way: the process should be opened up to allow for external applications that would be transparently processed and evaluated.[5]

Rules of Selection

When Sørensen first became the Ombudsman in 2011, he described his vision for the future of the institution, stating that the “Ombudsman must never be above debate and criticism [...] because it is otherwise easy to fall into the habitual routines and old practices that might be improved.”[6] The process for selection of the Danish Ombudsman seems to be one such old habit that is in need of improvement. The selection mechanism has not been put into frequent use, because for the last 32 years, the office has been held by only two men: Sørensen most recently (2012-2019) and before him by Hans Gammeltoft-Hansen (1987-2012).[7] The infrequent change of the Ombudsman likely contributed to the neglect of formal rules.

The Constitution of Denmark (1953) provides in Section 55 that the Parliament may appoint “one or two persons [...] to supervise the civil and military administration of the State.”[8] The selection procedure is further regulated by the Ombudsman Act (1996), which stipulates that the Parliament appoints a new Ombudsman after each general election or when a vacancy occurs. The qualification requirements for the position are that the candidate must have a graduate law degree, and cannot be an active politician in a state, regional, or local representative body. No other qualitative requirements or rules apply to the selection.

Committee Procedure

The best description of the practice in an area of the Danish constitutional law where there are no other sources is in the report of the Legal Affairs Committee from 2011 when Sørensen was to succeed Gammeltoft-Hansen in the office. At the time, the LAC set up a sub-committee, consisting of one representative from each parliamentary party to propose a candidate for the election of the Ombudsman. To sub-committee held a series of meetings behind closed doors to find a candidate “who had the right qualifications to contest the position of the Parliamentary Ombudsman.”[9]

The subcommittee reviewed “several reputable lawyers,” and finally agreed to propose to the LAC that the Attorney General Jørgen Steen Sørensen be elected as the new Ombudsman. It is not clear from the report how parties selected their nominees, what kind of criteria did they use to evaluate the nominations, or whether nominees attended the committee hearing to answer questions about their resume. The committee hearing and individual applications remained confidential.[10]

The inscrutability of the selection of the Danish Ombudsman is puzzling. The procedure does not involve a call for applications or some form of a public hearing, unlike Sørensen’s recent confirmation to the Supreme Court. There does not seem to be a concern for the diversity either.

Comparative Best Practice

Comparative practice suggests that lack of formal rules for the selection of the Ombudsman makes the institution vulnerable to abuse from political branches of the government, although democratic political culture may alleviate this danger. The European Commission for Democracy through Law adopted in May of this year the so-called “Venice Principles on the Protection and Promotion of the Ombudsman Institution.” The Principles are to help consolidate and strengthen Ombudsman institutions in member states of the Council of Europe. Interestingly, the document was co-authored by Ombudsman Sørensen, in his capacity as the selected member of the Venice Commission for Denmark.

The Venice Principles provide, among other things, guidelines for the design of appointment and election procedures to Ombudsman institutions. Such procedures should enhance to “the highest possible extent the authority, impartiality, independence and legitimacy” of the Ombudsman, and “include a public call and be public, transparent, merit-based, objective, and provided for by the law.”[11] The criteria for appointment should moreover be sufficiently broad to encourage a diverse range of applications. The selection mechanism of the Danish Ombudsman does not reflect these principles. At a minimum, the public should be informed of the characteristics that qualify persons for the Office of an Ombudsman based on the practice of the LAC. Interested applicants should be also made aware of the proper procedure for application, so that the Committee considers them for an appointment.

Conclusion

The Office of the Danish Parliamentary Ombudsman is one of the world’s oldest Ombuds-institutions. The few individuals who lead the Office throughout the years have been able to keep the institution relevant to modern-day Denmark and at critical junctions effectively criticise the misconduct of administrative agencies. However, the legislative framework that underpins the institution fell out of step with trends of transparent and open government that are prominent in other areas of Danish public administration. The Ombudsman is soon to enter a new age, which was highlighted recently by a [letter](#) to the Legal Affairs Committee co-authored by one of the professors at the University of Copenhagen Hanne Marie Motzfeldt. She argued that

LAC should select a candidate for the Ombudsman who is technologically savvy and understands the digitalization processes in governance. It might be a good idea to update the Ombudsman selection process for this new age so that it is open, transparent and allows for wide recruitment of talent.

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[1] The statutorily required notice period is six months pursuant to Article 4.1 of the Ombudsman Act

[2] Folketinget vælger midlertidig ombudsmand" (*Folketinget*, 24 October 2019)
<<https://www.ft.dk/aktuelt/nyheder/2019/11/valg-af-midlertidig-ombudsmand>>

[3] "Folketinget vælger ny ombudsmand" (*Folketinget*, 26 November 2019)
<<https://www.ft.dk/da/aktuelt/nyheder/2019/11/ny-ombudsmand>>

[4] Principles for the Protection and Promotion of the Institution of the Ombudsman ("The Venice Principles")
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[5] This contribution focuses on the openness and transparency of the appointment process, but other improvements can be made, such as greater attention to professional and gender diversity. The new Ombudsman Niels Fenger was a professor of administrative law and for a short time a judge of the Eastern High Court. No woman ever served as Ombudsman in Denmark

[6] Jørgen Steen Sørensen, "Sidste led i borgernes retssikkerhed" (*Politiken*, 27 April 2012)
<<https://www.ombudsmanden.dk/findviden/artikler/20120527/>>

[7] Three other men served as Ombudsman since the establishment of the office in 1955

[8] Despite the fact that the Constitution allows for the plural model of the Ombudsman institution, the legislative framework provides for a single Ombudsman. Instituting two Ombudspersons, which the Constitution formally allows, with a staggered term of office will resolve the problem with delayed appointments. Such a solution requires a legislative amendment

[9] Draft report and recommendation on the election of the Danish Parliamentary Ombudsman, Committee on Legal Affairs, December 2011
<<https://www.ft.dk/samling/20111/almdel/REU/bilag/141/1052607/index.htm>>

[10] For renewal in the position, the LAC used to contact the office-holder first, and if the Ombudsman expressed interest in continuing to serve, the selection would be uncontested. See the Proposal for a parliamentary resolution on the election of the Ombudsman, Committee on Legal Affairs, October 2015
<https://www.ft.dk/samling/20151/beslutningsforslag/b24/20151_b24_som_fremسات.htm>

[11] The Venice Principles, no. 7, accessible at
<[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)>